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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF PUERTO RICO**

5 UNITED STATES OF AMERICA )  
6 )  
7 )

8 Plaintiff, )

9 VS. )

10 JOSE RAMON HERNANDEZ. )

11 Defendant[s], )  
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**CASE NO.: 97-cr-228 JAF**

**DEFENDANTS RESPONSE IN OPPOSITION TO MOTION TO CONVERT**  
**RE-SENTENCE TO A STATUS CONFERENCE**

17 **COMES NOW**, the above named defendant –through counsel-and file the instant opposition  
18 pursuant to Local Rule 7.1 to the Governments motion to convert re-sentence to a status  
19 conference. In support the defendant states and prays as follows:

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- 21 1. The court has indicated a judicial desire to resentence the defendant as a remedy to the  
22 issues before the court.
  - 23 2. The Government advanced their argument that they believed a sentence of 180 months is  
24 appropriate and did in fact submit the matter to the defendant.
  - 25 3. The defendant filed a sentencing memorandum under which it stated that he would agree  
26 to a sentence that is sufficient and not greater than necessary under the modern view after  
27 *Booker/Fanfan*. The defendant further argued that he would be satisfied for a sentence of  
28 144 months, but that he would be content and accept any sentence the court deemed fair  
and just.

- 1 4. The governments attempt to delay the sentence unless an agreement may be had with
- 2 respect to the Government's version of a sentence, is violative of the defendants rights to
- 3 due process of law and a speediest resolution of the issues before the court.
- 4 5. In the instant case each party has argued their respective views regarding a resentence,
- 5 which each party stipulated that the court can do and has absolute power to correct a
- 6 sentence, or take any measures that would advance the interest of judicial economy.
- 7 6. The defendant has not offered or suggested anything that can lead the government into
- 8 suggesting that somehow that time served is the sentence that the defendant seeks. After
- 9 all, Judge Aida Delgado-Colon concluded and the First Circuit supported the new
- 10 evidence as "*sufficient to cause reasonable doubt to the extent that a jury could decide to*
- 11 *acquit*". Rather, the defendant understands and respects the inherent powers and
- 12 discretion of this Honorable Court and agrees to abide by its ruling, whatever that might
- 13 be.

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15 **WHEREFORE** the appearing defendant respectfully prays to this Honorable Court to  
16 deny the Governments motion to convert the re-sentence hearing to a status conference.

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18 Respectfully submitted,

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24  
25 **CERTIFICATE OF SERVICE**

26 I certify that on This Day the instant pleading was filed using the court CM/ECF electronic filing  
27 system that will send a cop of the pleading to all counsels of record.

28 S./Lorenzo J. Palomares-Starbuck